

EX PARTE OR LATE FILED

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

ORIGINAL

TO-QUYEN T. TRUONG
DIRECT DIAL 202-776-2058
ttruong@dialaw.com

WASHINGTON, D.C.

1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

July 14, 2004

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

JUL 14 2004

Federal Communications Commission
Office of Secretary

Re: *Oral Ex Parte* Notification
**CG Docket Nos. 04-53, 02-278 – In the Matter of Rules and Regulations
Implementing the Controlling the Assault of Non-Solicited Pornography and
Marketing Act of 2003; Rules and Regulations Implementing the Telephone
Consumer Protection Act of 1991**

Dear Ms. Dortch:

On July 13, 2004, Frank Triveri of Nextel Communications, Inc. ("Nextel"), Don Girskis of Boost Mobile and the undersigned, counsel for Nextel and its subsidiaries, met with Gene Fullano, Leon Jackler, Erica McMahon, Nathan Olson, Richard Smith, and Ruth Yodaiken of the Consumer and Governmental Affairs Bureau, Richard Hovey and James Miller of the Office of Engineering and Technology, and Christina Clearwater, Jennifer Salhus, and Nese Guendelsberger of the Wireless Telecommunications Bureau, regarding the Commission's implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act") in the above-referenced proceeding.

These discussions reflected the comments filed by Nextel in this proceeding. Among other subjects, we discussed the special needs of providers of pre-paid wireless services to communicate with their customers through mobile messages. We also recommended that the Commission either (a) clarify that messages from a commercial mobile radio service (CMRS) carrier to its customers regarding communications-related services and products offered by the carrier fall within the "transactional or relationship message" exemption under Section 3(17) of the CAN-SPAM Act; or (b) exempt such messages from the general requirement to obtain recipients' prior express consent, pursuant to the Commission's authority under Section 14(b)(3) of the Act. We noted that the Commission's adoption of the exemption under Section 14(b)(3) would trigger that provision's self-activating requirement that carriers "allow their subscribers to indicate a desire not to receive future mobile commercial messages from the provider (1) at the time of subscribing to such service, and (2) in any billing mechanism." In addition to expressing Nextel's full support for this requirement to give customers the opportunity to refuse such

No. of Copies rec'd
List ABCDE

OTT

Ms. Marlene H. Dortch

July 14, 2004

Page 2

messages from their carriers, we explained that CMRS carriers have every business incentive to limit such communications to their customers. We also suggested that, in defining the exempted messages as those regarding communications-related services and products offered by the CMRS provider, the Commission refer to the definition of "communications-related services" under 47 C.F.R. § 64.2003 and other Customer Proprietary Network Information rules adopted by the Commission to implement 47 U.S.C. § 222. Finally, we suggested that the Commission impress upon the Federal Trade Commission the impracticability of imposing on senders of mobile service commercial messages the same disclosure requirements that apply to other commercial email messages, given (a) the text character limitations of mobile messages and (b) the annoyance and costs to recipients to access and review mobile phone messages that contain such detailed disclosures.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket and a copy is being provided to the members of the Commission staff who attended the meeting. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'To-Quyen Truong', with a stylized, flowing script.

To-Quyen Truong

cc: Gene Fullano
Leon Jackler
Erica McMahon
Nathan Olson
Richard Smith
Ruth Yodaiken
Richard Hovey
James Miller
Christina Clearwater
Jennifer Salhus
Nese Guendelsberger